



# FINGERPRINTING OF DEFENDANTS

## Study Highlights

January 2019

For an offense to be applied to a criminal history record, fingerprints must be taken during the criminal justice process and submitted, along with a record of the charge and disposition, to the Central Criminal Records Exchange.

The following offenses must be reported to the CCRE:

- Any felony;
- Jailable misdemeanors in Titles 18.2 or 19.2;
- All misdemeanors in Title 54.1 (Professions);
- Non-payment of spousal and child support; and,
- Protective order violations.

The CCRE maintains a Hold File that contained over 700,000 offenses (as of Nov. 28, 2018) that have not been applied to criminal history records, primarily because the CCRE did not receive the defendant's fingerprints. Of these unapplied offenses, at least:

- 134,000 were felony convictions; and,
- 289,000 were misdemeanor convictions.

## Study Findings

The Central Criminal Records Exchange (CCRE) is administered by the Virginia State Police (VSP). Information in the CCRE is used to generate an individual's criminal history record. Staff discovered that a Hold File exists within the CCRE which contains over 700,000 criminal offenses that have not been applied to the criminal history records of defendants. The vast majority of these offenses have not been applied because the defendant's fingerprints were not collected or submitted to the CCRE. Analysis of the Hold File revealed that:

- Offenses included both felonies and misdemeanors;
- The majority of felony offenses were for probation violations, followed by fraud, larceny, drug, and assault offenses;
- The largest categories of misdemeanor offenses included assault, narcotics, contempt of court, larceny, and failure to appear offenses;
- A majority of the offenses were for arrests made from 2010 onward;
- While the dispositions of the offenses vary, approximately 60% of the offenses resulted in a guilty finding (conviction);
- The file contained at least 55,000 unique individual convicted felons; and,
- The offenses were from jurisdictions across the entire Commonwealth.

Law enforcement agencies are responsible for taking the fingerprints of a defendant following an arrest. The chief law enforcement officer of a city or county is required to take the fingerprints following the conviction of a defendant charged on a summons. Clerks of court are required to transmit case disposition reports to the CCRE. Additionally, the Department of Corrections (DOC) takes fingerprints of defendants placed in state correctional facilities or on state probation and transmits those fingerprints to the CCRE.

Staff identified several factors that contribute to fingerprints not being taken during the criminal justice process. These factors include (i) varying procedures for how and when fingerprints are taken, (ii) lack of personnel and resources, (iii) taking fingerprints for only some offenses when the defendant is arrested on multiple charges, (iv) not fingerprinting defendants who are in custody following a direct indictment, and (v) misunderstandings about which offenses require fingerprints. Staff identified solutions to retroactively apply some of the offenses in the Hold File to criminal history records and to prospectively ensure that future offenses are successfully applied to criminal history records. Crime Commission members unanimously endorsed the following revisions to the Code of Virginia which were all enacted during the Regular Session of the 2019 General Assembly to:

1. Define "unapplied criminal history record information" (§ 9.1-101);
2. Require the CCRE to submit periodic reports to stakeholders, an annual report to the Governor and General Assembly, and to reconcile unapplied criminal history record information (§ 19.2-388);

Felony convictions that have not been applied to criminal history records include offenses such as murder, rape, robbery, assault, kidnapping, DWI, and weapons violations.

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Criminal history records are used for several criminal justice purposes, including:

- First offender eligibility;
  - Bail determinations;
  - Sentencing guidelines;
  - Predicate offenses;
  - Expungements;
  - DNA databank; and,
  - Latent fingerprint comparison.
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Criminal history records are also used for many civil purposes, including:

- Sex offender registry;
- Firearms purchases;
- Barrier crimes exclusions;
- Professional licensing; and,
- Employment eligibility.

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*Revised June 2019*

3. Mandate that fingerprints be taken upon finding that a defendant is in violation of the terms of a suspended sentence, probation, or parole, if the underlying offense was a felony (§§ 19.2-390 and 53.1-165);
4. Require that charges of domestic assault and battery and property offenses that are deferred and dismissed be reported to the CCRE (§ 19.2-390);
5. Require that courts determine whether fingerprints have been submitted at the time certain charges are deferred and ensure that fingerprints have been taken prior to dismissing those charges (§§ 18.2-57.3, 18.2-251, 19.2-74, 19.2-303.2, 19.2-390, and 19.2-392);
6. Require that fingerprints of defendants who are in custody following a direct indictment be taken at the first appearance (§§ 19.2-232 and 19.2-390);
7. Order that a defendant's fingerprints be taken as a condition of a suspended sentence or probation (§ 19.2-303);
8. Permit the CCRE to classify and file information and fingerprints received from DOC as criminal history record information, unless otherwise prohibited by law (§§ 19.2-390, 53.1-23, 53.1-145, and 53.1-165);
9. Require state probation officers to verify that the conviction for which a defendant is being supervised appears on their criminal history record before releasing them from probation and, if it does not, take the fingerprints of the defendant and notify the CCRE (§ 53.1-145);
10. Require local probation officers to verify that the conviction for which a defendant is being supervised appears on their criminal history record before releasing them from probation and, if it does not, order the defendant's fingerprints be taken by law enforcement and notify the CCRE (§ 9.1-176);
11. Require the court to review criminal history records at restitution review hearings and, if the offense for which a defendant was convicted does not appear, order that the fingerprints of the defendant be taken (§ 19.2-305.1);
12. Clarify the CCRE reporting requirements for clerks of court for suspended sentence and probation violations and for offenses charged via summons (§ 19.2-390);
13. Expand the list of offenses that require a report to the CCRE (§ 19.2-390);
14. Require VSP to develop and disseminate a model policy to law enforcement agencies on the collection of fingerprints and reporting of criminal history record information to the CCRE (§ 19.2-390.03 – new section);
15. Allow the court to modify the terms of a suspended sentence or probation at any time during the period of suspension or probation to order that the fingerprints of a defendant be taken (§ 19.2-303.02 – new section); and,
16. Require VSP to work with state and local agencies and the courts to ensure that unapplied criminal history record information currently in the Hold File is applied to criminal history records (2<sup>nd</sup> Enactment Clause).

Crime Commission members unanimously endorsed the following administrative recommendations to send letters requesting that:

17. VSP develop a brief reference guide of CCRE reportable offenses for use by law enforcement agencies and develop policies and procedures for referencing the CCRE Hold File when conducting criminal history records checks in certain circumstances;
18. State and local agencies, along with corresponding associations, provide training on the collection and submission of fingerprints and the relationship between fingerprints and criminal history records; and,
19. Office of the Executive Secretary of the Supreme Court of Virginia, in coordination with other users of the Uniform Statute Table, update and implement a revised table by July 2019.